IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.524 OF 2001

IN

NOTICE OF MOTION NO.1882 OF 1995

IN

SUIT NO.2652 OF 1995

Mahendrasingh K. Kothari. ...Appellant.

vs.

1.M/s.Pankaj Builders & others. ...Respondents.

Ms.Shakuntala Joshi, for Appellant.

Mr.Vinay Singh i/b. Mr.A.V.Jain, for Respondent no.1.

None for Respondent no.2.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 27th August,2007.

P.C.:-

1. By this appeal, the appellant makes a grievance against the order dated 14.10.1997

passed in Notice of Motion no.1882 of 1995 with notice of motion no.3162 of 1995. Notice of motion no.1882 of 1995 was taken out by the present appellant who is plaintiff in the suit and the notice of motion no.3162 of 1995 was taken out by defendant no.2 for stay of some ad-interim order passed in the above referred suit. Therefore, both the notices of motion are disposed of by the learned Single Judge by a common order. The only part of the order against which the grievance is made by the appellant reads as under:-

> "Plaintiff to pay to Court Receiver or defendant no.2, a sum of Rs.1,47,500/- plus Rs.8750/- with interest at the rate of 12% p.a. from May,1989 till date of payment."

By the order impugned, Receiver has been appointed on the property and the appellant has been appointed as agent of the Receiver. In so far as the portion quoted above of the order is concerned, the grievance of the appellant is that

he has paid the entire agreed consideration save and except the amount of Rs.29,000/- which the appellant has deposited in the Court. The respondent no.1 i.e. the builder from whom the property was purchased by the appellant also admits the correctness of the case stated by the appellant. The respondent no.2 Society who is defendant no.2 in the suit is the contesting respondent, but none appears for respondent no.2. The respondent no.2 is disputing the whole transaction. The appellant/plaintiff is in possession of the premises as an agent of the Receiver. If ultimately, the Court finds that those amounts are payable by the appellant, an order can be made by the Court at the final hearing and the appellant is willing to file an undertaking to deposit the amount in the Court or to pay the amount, as may be directed by the Court at the final hearing.

2. We have gone through the record, we have heard the learned Counsel appearing for appellant and respondent no.1. As observed above none

appears for respondent no.2. It does prima facie appear that the appellant has paid the agreed consideration substantially. Therefore, till the suit is pending, it will not be appropriate to ask the appellant to pay or deposit the amount mentioned in clause (B) of the order which is impugned in the appeal which is quoted above. In our opinion, interest of justice will be subserved by directing the appellant to give undertaking to the Court undertaking therein to pay or deposit the amount mentioned in the above quoted portion of the order, if so directed by the Court at the final disposal of the suit. The appeal is therefore, disposed of in the following terms:-

Clause (B) of paragraph 3 of the order dated 14.10.1997 impugned in this appeal is set aside, subject to the condition that within a period of two weeks from today the appellant files an undertaking in this Court undertaking to the Court to deposit an amount of Rs.1,47,500/- plus Rs.8750/- with interest at the rate of 12%

per annum from May, 1989 till the date of payment, if so directed by the Court at the final hearing of the suit. Appeal is disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)